

Message Text

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ACTION EUR-25

INFO OCT-01 ISO-00 EB-11 SCI-06 COA-02 IO-14 L-03 INR-11

PM-07 SP-03 SS-20 SSO-00 OIC-04 DRC-01 NEA-14 EA-11

INRE-00 RSC-01 /134 W

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TO SECSTATE WASH DC IMMEDIATE 3678

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E.O. 11652: N/A

TAGS: SENV OECD

SUBJECT: MEETING OF OECD ENVIRONMENT COMMITTEE AT
MINISTERIAL LEVEL

REF: (A) STATE 205700, (B) 207121

1. ENVIRONMENT COMMITTEE OF OECD WILL MEET AT "MINIS-
TERIAL" LEVEL NOVEMBER 13 AND 14, 1974.

(A) TO ISSUE A DRAFT DECLARATION ON ENVIRONMENTAL POLICY
ON BEHALF OF GOVERNMENTS; A POLITICAL STATEMENT NOT CON-
SIDERED TO BE AN ACT OF THE ORGANIZATION IN THE TERMS
OF THE OECD CONVENTION AND

(B) TO ADOPT TEN RECOMMENDATIONS FOR ENVIRONMENTAL
ACTION, INCLUDING TRANSFRONTIER POLLUTION AND
THE POLLUTER PAYS PRINCIPLE, WHICH ARE OECD ACTS
(RECOMMENDATIONS). THE PROCEDURAL PROBLEM STEMS FROM
THE FACT THAT UNDER THE CONVENTION ONLY THE COUNCIL CAN
ADOPT ACTS. WE HAVE CONSIDERED THE VARIOUS POSSIBILI-
TIES AND DISCUSSED WITH SECRETARIAT IN FOLLOWING TERMS:

2. THE DRAFT DECLARATION ON ENVIRONMENTAL POLICY IS BE-
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ING VETTED SUBSTANTIVELY BY THE EXECUTIVE COMMITTEE AND

THE COUNCIL AND WILL BE SUBMITTED "FOR ADOPTION BY THE GOVERNMENTS OF OECD MEMBER COUNTRIES AT THE MEETING OF THE ENVIRONMENT COMMITTEE AT MINISTERIAL LEVEL" (DOCUMENTS C(74)162 AND C(74)179). MINISTERS WILL ACT FOR THEIR GOVERNMENTS IN APPROVING A DECLARATION WHICH HAS NO LEGAL CHARACTER; IT IS SIMILAR TO THE TRADE PLEDGE IN THIS RESPECT AND NO COUNCIL ACTION IS REQUIRED.

3. THE PROBLEM OF THE ACTION PROPOSALS (DOC. C(74)158) IS MORE DIFFICULT, BECAUSE IN ORDER TO BE OECD RECOMMENDATIONS, IN THE SENSE OF THE CONVENTION, COUNCIL ACTION IS REQUIRED. THE OECD CONVENTION DELIBERATELY REQUIRES COUNCIL ACTION TO ENSURE THAT ACTS OF THE ORGANIZATION ARE IN A TRUE SENSE ACTS OF THE MEMBER GOVERNMENTS AND NOT OF ONE OR ANOTHER GROUP REPRESENTING A SPECIFIC FUNCTIONAL INTEREST IN THE MEMBER GOVERNMENTS. OECD PRACTICE HAS BEEN MARKEDLY DIFFERENT FROM EC COUNCIL IN THIS RESPECT. PREVIOUS MEETINGS OF AGRICULTURE MINISTERS, OR SCIENCE MINISTERS DID NOT SEEK TO COME TO CONCLUSIONS IN THE SENSE OF ACTS OF ORGANIZATION (RECOMMENDATIONS OR DECISIONS) AND NO PRECEDENT THEREFORE EXISTS. THE PROBLEM IS TO AVOID A SITUATION WHICH WOULD CREATE TOO OBVIOUS AN IMPRESSION THAT EITHER THE COUNCIL OR THE MINISTERIAL COMMITTEE IS MERELY RUBBER-STAMPING THE OTHER'S ACTION.

4. POSSIBLE OPTIONS ARE:

(A) FOR THE COUNCIL TO DELEGATE ITS POWERS TO THE MINISTERIAL ENVIRONMENT COMMITTEE TO ADOPT RECOMMENDATIONS OF THE COUNCIL. ANOTHER POSSIBILITY WOULD BE TO DESIGNATE THE MEETING OF THE ENVIRONMENT MINISTERS A MINISTERIAL COUNCIL SESSION AS THE EC DOES. WHILE PERHAPS NOT PRESENTING A PROBLEM IN THE PRESENT CASE, A PRECEDENT WOULD BE CREATED MAKING IT DIFFICULT TO AVOID OTHER FUNCTIONAL MINISTERIAL COUNCIL MEETINGS OR DELEGATIONS OF AUTHORITY IN THE FUTURE. THE MISSION IS NOT AT ALL CERTAIN THAT WE WANT TO CREATE THIS PRECEDENT. THE VALUE IN TERMS OF U.S. OBJECTIVES RE THE ENERGY AGENCY (REFTEL (B)) IS DUBIOUS AT BEST. THE LIMITED OFFICIAL USE

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ENERGY AGENCY WOULD BE A PART II ACTIVITY AND WE WANT COUNCIL DECISION CREATING THE ENERGY AGENCY TO BE FORMULATED IN SUCH A WAY AS TO AVOID GIVING THE COUNCIL A HANDLE ON SUBSEQUENT ACTIONS OF THE AGENCY. A DELEGATION OF POWERS WHICH IS "CIRCUMSCRIBED OR LIMITED" (IN THE SENSE OF REFTEL (B)) WOULD APPEAR TO BE A PRECEDENT IN THE OPPOSITE SENSE. TO LIMIT OR CIRCUMSCRIBE THE DELEGATION OF AUTHORITY IN THE SENSE OF

PREScribing AHEAD OF TIME THE LANGUAGE OF THE RECOMMEN-
DATIONS THAT THE MINISTERS COULD ADOPT WOULD MAKE THE
LATTER BODY TOO OBVIOUSLY A RUBBER STAMP. THE ISSUE OF
PRECEDENT IS WHETHER WE ARE PREPARED TO SEE OTHER

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FUNCTIONAL GROUPS MEET IN OECD AND ADOPT ACTS WHICH
MIGHT NOT BE FULLY IN CONSONANCE WITH GOVERNMENT-WIDE
POLICY. IN ANY EVENT SECRETARIAT POINTS OUT THIS OPTION
MAY NOT BE PRACTICABLE BECAUSE IT WOULD REQUIRE COUNCIL
UNANIMITY TO IMPLEMENT, AND ONE OR MORE COUNTRIES MAY
NOT WISH TO CREATE THIS PRECEDENT.

(B) FOR THE PERM REP COUNCIL TO APPROVE THE RECOMMENDA-
TIONS DURING OR IMMEDIATELY AFTER ACTION BY THE MINIS-
TERIAL COMMITTEE. THIS OPTION HOWEVER WOULD APPEAR TO
HIGHLIGHT BOTH THAT MINISTERS ARE NOT EMPOWERED TO
ADOPT RECOMMENDATIONS AND THAT COUNCIL IS A RUBBER
STAMP. THE SCENARIO UNDER THIS OPTION IS NEVERTHELESS
WORKABLE IF IMPORTANT SUBSTANTIVE, AND/OR CONTROVERSIAL
CHANGES HAVE NOT BEEN MADE BY THE MINISTERS IN THE TEXTS
SUBMITTED TO THEM. IF, HOWEVER, MINISTERS MAKE IMPORTANT
CHANGES IN THE TEXTS PERM REPS WOULD BE FACED WITH
THE DILEMMA OF EITHER TAKING RESPONSIBILITY FOR APPROV-

ING ON BEHALF OF THEIR GOVERNMENTS TEXTS WHICH OTHER GOVERNMENT AGENCIES MAY NOT HAVE CONSIDERED OR OF THWARTING THE WISHES OF THE VISITING ENVIRONMENT MINISTERS.

(C) FOR THE WORDING OF MINISTERIAL COMMITTEE ACTION TO BE CAST POSITIVELY BUT IN SUCH A WAY AS NOT TO LIMITED OFFICIAL USE

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CONSTITUTE A RECOMMENDATION IN THE SENSE OF THE OECD CONVENTION FOR EXAMPLE, "MINISTERS RECOMMEND TO THEIR GOVERNMENTS" OR SOME OTHER FORMULA WHICH IS NOT PRESENTATIONALLY WEAK AND WHICH COULD BE RELEASED TO PRESS. AT SOME LATER DATE PERM REP COUNCIL COULD ADOPT THE FORMAL RECOMMENDATIONS. THIS WOULD PERMIT AN OPPORTUNITY FOR SUBSEQUENT CONSIDERATION AND QUIET DIPLOMATIC RECONCILIATION OF ANY UNFORESEEN TROUBLESOME LANGUAGE CHANGES TO EMERGE FROM ENVIRONMENT MINISTERIAL MEETING.

5. WHILE NONE OF THESE OPTIONS ARE PERFECT, WE BELIEVE WE SHOULD CLEARLY PINPOINT THE RESPONSIBILITY FOR FINALLY ADOPTING A RECOMMENDATION ON EITHER THE COUNCIL OR THE ENVIRONMENT MINISTERS. THUS MINISTERIAL ENVIRONMENT COMMITTEE MEETING SHOULD EITHER BE GIVEN BROAD DELEGATION OF POWER OR BE CONSIDERED A MINISTERIAL COUNCIL MEETING, OR PERM REP COUNCIL SHOULD BE GIVEN AMPLE OPPORTUNITY TO CONSIDER AND ADOPT ACTS THAT MAY HAVE BEEN SUBSTANTIALLY CHANGED. THERE ARE ARGUMENTS IN FAVOR OF EACH SOLUTION. WE TEND TO FAVOR THE LATTER.

6. OUR CONVERSATIONS WITH THE SECRETARIAT HELPED CLARIFY ISSUES FOR BOTH OF US. THEY WILL REFLECT ON MATTER PRIOR TO SEC GEN DISCUSSION AT MEETING OF HEADS OF DELEGATIONS FOLLOWING THE COUNCIL MEETING OF TUESDAY, SEPTEMBER 24, 1974. WE WILL ASSUME UNLESS INSTRUCTED TO THE CONTRARY THAT WE CAN GO ALONG WITH ANY SOLUTION THAT RALLIES A LARGE CONSENSUS.
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